Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

JOHN T. E. TALLEY, SR.

PETITIONER

V.

STATE OF OHIO

RESPONDENTS,

PETITION FOR WRIT OF CERTIORARI

TO THE STATE OF OHIO

PETITION FOR WRIT OF CERTIORARI

JOHN T. E. TALLEY, SR.
1738 HOLYOKE AVE.
EAST CLEVELAND, OH.
44112
216-681-5555
IN PRO PER

X3-H15A-8/29/94

13H

QUESTIONS PRESENTED

1. DOES THE OHIO COURT OF APPEAL CONFLICT WITH THE NEW YORK COURT OF APPEAL BY DENYING DISABILITY BENEFITS U.S. 28.451, 1254, 1257 OF THE UNITED STATES CONSTITUTION AND VIOLATES ARTICLE VIII 6,7 1-16 OF OHIO AND VIOLATES THE OHIO CIVIL CODE 1005 AND THE FOURTEENTH AMENDMENT DUE PROCESS CLAUSE AND RULE 10A OF THIS COURT?

2. DID THE COURTS OF OHIO ACT INVIDIOUS IN APPLYING THE PROVISION DENYING DISCOVERY AS MOOT ARTICLE I R26, 34, 1005, OHIO EVIDENCE ARTICLE I 101 AS PROHIBITED BY ARTICLE 1-16 OHIO CONSTITUTION, THE EQUAL PROTECTION

CLAUSE AND THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION?

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APPENDIX A-1

TABLE OF AUTHORITIES

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State v. Woodway, 63 pp 3d 577 NE 2nd,

1157 Portage 1989 6

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Schisler v. Bowen cite as 851 F.2d 43(2d Cir. 88) . . 7

STATUTES

Civil Code	1005, R26 28,451	2
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NO._____

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

OCTOBER TERM, 1993

JOHN T. E. TALLEY, SR.,

PETITIONER

v.

THE STATE OF OHIO

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI

TO THE

UNITED STATES COURT OF APPEALS

SIXTH CIRCUIT

Petitioner, John T. E. Talley, Sr., respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Ohio Appeals Court, denying disability

benefits is in violation of the United States and the Ohio Constitution VIII-9, 1-19, also the Fourteenth Amendment Due Process Clause, the Civil Code 1005, Evidence Code of Ohio Article I Rules 26, 34, 101, 1005, invidious changing of tracks from an Expedited suit to a Non-suit to deny discovery as moot violates the Fourteenth Amendment.

OPINION BELOW

The opinion of the Ohio Courts is an unpublished opinion and will appear later in this petition and Appendix. The petitions of the petitioner were denied and discovery moot in the records of both Ohio Courts.

JURISDICTION

The Court of Appeals decision in this matter was filed on November 25, 1993. A timely Petition for Review was filed on November 29, 1993. The Ohio Court of Appeal Sixth Circuit affirmed the District Court's judgment and accordingly denied Writ of Certiorari petition January 14, 1994 in respect to U.S.C. 28.2403. This Court's

jurisdiction R 1OA is invoked under Title 28 & 1257 1,2,5,85 and Title 28 & 1254 301. The petitioner has argued that this is a Federal Constitutional question 28.451 in the complaint both in the District and Court of Appeal and in the Due Process and Equal Protection Clause in the Plaintiff's Briefs. You must also read The Cleveland Plain Dealer article dated April 19, 1992. (Attached)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV to the United States and Ohio Constitution, Article VIII 6,7 1-16 and Constitutional Law 278.3, 28.451, Ohio Civil Code of Procedure Article I R26, 34, 101, 1005 also various others are listed in the Court Records and in this petition.

> [N]or shall any State deprive any person of life, liberty, or property without due process of law[.]

STATEMENT OF THE CASE

On October 28, 1992, in my initial complaint, I certified the fact that the Constitutionality of an act of

Congress was drawn into question with Civil Action, title XIII Vol.1 1331 no. 4 page 2 no. 6, page 3 no. 7-1-4, and The Cleveland Plain Dealer article dated April 19, 1992. Ohio Social Security used this 1980 law to control cost and to deny both complaints. The United States Court of Appeal Second Circuit of New York ruled against res judicata. Disabled & New York City v. Social Security (1992). Schisler 3

Cleveland Plain Dealer, April 19, 1992.

> "The settlement affects those who were denied benefits at any point in the 11 years since the Reagan administration began a systematic campaign to purge the Social Security disability rolls. Benefits are supposed to be paid to people who cannot engage in any 'substantial gainful activity.'
>
> "The administration said its campaign was required under law and was essential to control the cost of the rapidly growing disability program. The government contended that many beneficiaries were able to

work even though courts later found that thousands were helpless because of severe physical or mental problems.

"The Reagan administration's efforts to purge the Social Security rolls produced a flood of lawsuits and many judges ruled against the government.

"For example, the U.S. District Court in Minnesota said in 1984: 'Claimants who lose or are denied benefits face foreclosure proceedings on their homes, suffer utility cutoffs and find it difficult to purchase food.'" Cleveland Plain Dealer, April 19, 1992.

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of

life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Please address Marbury v. Madison, adjudged in the Supreme Court in August and December terms, 1801, and February term 1803, page 162, "For it is a settled and invariable principle in the laws of England, that every right, when withheld, must have a remedy, and every injury its proper redress." 404.1520 12 months.

FACTS

10-28-92 (First Instance) In my Complaint and on the CIS, this was a related case class action member US 2nd Circuit Court of Appeals of New York which was settled out of court in 1992. It came from a 1984 class action, see Schisler v. Heckler cite as 787 F.2d 76(2d Cir. 86), also, Schisler v. Bowen cite as 851 F.2d 43(2d Cir. 88). SSA concedes to 405 G, all disabled under Title II will have a review regardless once I commence civil action.

Social Security waived all res judicata time in 1992. Your benefits date begins when you were first determined disabled, stated Newman, Winter and Coffrin 1986, Winter Pratt and Altimaci 1988. Judges, page 2 no. 6. of my complaint, I was disabled at all times mentioned herein the plaintiff was under a disability within the meaning of the provision of the Federal Social Security Act from October 26, 1984, through January 19, 1988 The U. S. to reopen many rejected in Reagan era. This in itself is a Constitutional claim that the United States will reopen rejected claims. All you had to do was commence civil action under USC 405 G Section 2(d) (3) (B) Reform Act 98-460 Sec 2(d) (3) B 98 STAT 1794-1798, 1984 remand to Secretary of any claimant. Social Security was supposed to stop this practice Civil Procedure 28 Key 656 E.D. Wis. 1993, also, 671 M.D. Fla. 1993-678 N.D. TII 1993. The out of court settlement

and The Plain Dealer article dated April 19, 1992.

In the State of Ohio, Social Security is still denying disability benefits with res judicata. (Lack of subject matter) I asked both of the Ohio Courts to stop Social Security from this action and to pay my benefits from the date of on set including off set from the date of my injury, October 26, 1984. I was not permitted to obtain the case ruling of the seventy-five opinions of the New York Second Circuit Court of Appeals which was settled out of court and which Social Security had access to because of res judicata.

ISSUE

The sole issue we address is whether a Constitutional claim was raised. All other matters in this case were passed upon and denied.

REASONS FOR GRANTING THE WRIT

CONSTITUTIONAL LAW AGAINST STATES ACTION THAT ADJUDICATES IMPORTANT RIGHTS AND PROCEDURAL DUE PROCESS 278.3.

The State of Ohio did not comply with the State of

New York R 10A of this Court Conflict of States. Also, USC 28, 1257, notes 81 III issues reviewable by this Court generally for certiorari. Illinois v. Gates. (1983) 103 S.CT. 2317. It is in the records of both the District Court of Ohio and the Ohio Court of Appeal but was never addressed. To resist discovery is a violation of the Equal Protection and Due Process Clause. U.S. v. Reynolds, PA (1983) 73 S.Ct. 528. 8.2.2 of Dist. Court.

The right to court review is provided for in section 205(g) of the Social Security Act, as amended (42 U.S.C. 405(g) for claims under Title II and in section 1631(c)(3) of the Act (42 U.S.C. 1383(c)(3) for claims under Title XVI. 42 U.S.C. 405(g) states (G) to correct errors made in the allocation, to individuals or periods, of wages or self-employment income entered in the records of the Secretary; page 383, Their no periodic time

CONCLUSION

The petitioner has shown that the public benefits were taken once res judicata entered. The plaintiff had no chance to prima facie with the denial of discovery. Article I-1O1 notes 63-65.

"A court commits an abuse of discretion when it excludes evidence." State v. Woodway. 63 App. 3d 79,577 NE 2nd, 1157 Portage (1988).

To understand the words "not gainful" is a Federal and public issue. Title XIII Vol. I 1331-4 and U.S.C. 28.1254 states that it is unconstitutional to control costs or prices. No law can change the date of injury with res judicata, to this end I am asking the United States Supreme Court to grant all of my disability benefits from 1984 based on the decision of the New York Second Circuit Court of Appeals. As a result of this ruling, I should not have to wait until age sixty-two to collect disability benefits. I have been denied in excess of eighty-thousand dollars.

Dated: April 1, 1994

THE OHIO COURT OF APPEAL ERRED IN FAILING TO RECOGNIZE THAT MY DUE PROCESS RIGHTS WERE VIOLATED BY DENYING DISABILITY BENEFITS WITH RES JUDICATA. OHIO CONFLICTS WITH THE 1984 AND 1992 RULING OF THE SECOND CIRCUIT

COURT OF APPEALS OF NEW YORK WHICH SHOULD HAVE BEEN REVIEWED UNDER U. S. C. 405 G CLASS MEMBER AND PAID ALL MY BENEFITS.

on page 5# of the report and Recommendation 42 USC 424A. It is clear that Judge left out two words Temporary periodic I, will, never go back to the workplace. My Disability is permanent 42 USC 424A It states it reduced a worker's incentive to return to the workplace and hence impeded rehabilitative efforts;

I can not be rehabed. It's clear that the workers' compensation had reduced my benefits below 80%, page 638. State reduction the double offset should not apply. I also have been deprived of my First Amendment rights "My Day in Court." "Freedom of Speech" thus the Secretary, the administrative law judge (ALJ) and the Judges Erred.

Respectfully Submitted,

John T. E. Talley pro per

JOHN T. E. TALLEY, SR.
PETITIONER IN PRO PER

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

JOHN T. E. TALLEY, SR. PRO PER

PETITIONER

v.

STATE OF OHIO

RESPONDENTS,

PETITION FOR WRIT OF CERTIORARI

TO THE OHIO COURT OF APPEALS

SIXTH CIRCUIT

APPENDIX

JOHN T. E. TALLEY, SR.
1738 HOLYOKE AVE.
EAST CLEVELAND, OH. 44112
216-681-5555
IN PRO PER

X3-H15A-8/29/94

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

JOHN T. E. TALLEY, SR., PRO PER

RESPONDENT

v.

STATE OF OHIO

APPELLANT,

APPEAL FROM OHIO SIXTH DISTRICT COURT

TO THE

KENNEDY, MARTIN & NELSON

CIRCUIT JUDGES

JUDGMENT RULE 9(B)(3)

ORDER NOVEMBER 18, 1993, UNPUBLISHED

NO. 93-3643 RE 192 CV 2273

No. 93-3643

UNITED STATE COURT OF APPEALS

JOHN T. E. TALLEY,	)	
	)	
Plaintiff-Appellant,	)	
	)	
	)	
v.	)	O R D E R
	)	
SECRETARY OF HEALTH AND HUMAN SERVICES	)	File
	)	November 18, 1993
	)	
Defendant-Appellee.	)	
	)	
	)	

John T. E. Talley, a pro se Ohio resident, appeals a district court judgment affirming the Secretary's denial of his application for social security disability insurance benefits prior to January 20, 1988. Talley requests oral argument. The case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

On September 8, 1987, Talley filed an application for disability insurance benefits, alleging that he became disabled on November 23, 1984, due to a back injury. The application was denied at the initial level on December 11, 1987. On January 19, 1988, this decision was affirmed on reconsideration. Talley did not seek further review of that decision.

On December 15, 1989, Talley filed a second application for disability insurance benefits. He alleged that he became disabled on October 26, 1984, due to a

back injury and other impairments. After his application was denied initially and upon reconsideration, Talley requested an administrative hearing.

On May 17, 1991, an administrative law judge (ALJ) conducted a hearing. Talley, who was represented by counsel, appeared and testified. On June 19, 1991, the ALJ issued a decision denying Talley's claim for benefits. In his decision, the ALJ refused to review Talley's request for disability benefits prior to January 20, 1988, on the grounds of res judicata.

Subsequently, the Appeals Council vacated the ALJ's decision and remanded the case for a new evaluation of Talley's residual functional capacity and for a medical expert's opinion regarding his impairment. The ALJ conducted a second administrative hearing at which a medical expert testified that Talley's conditions equalled a listed impairment found in 20 C.F.R. Part 404, Subpart P, App. 1.

On April 10, 1992, the ALJ issued a new decision finding Talley disabled as of January 20, 1988 because his conditions equalled a listed impairment. The ALJ refused to reopen the January 19, 1988, decision based on res judicata grounds and because Talley had not submitted new evidence justifying a reopening. The ALJ also noted that Talley's disability benefits would be offset by his workers' compensation payments.

In June 1992, the Social Security Administration (SSA) effectuated the ALJ's decision. The SSA notified Talley that his disability benefits would be reduced due to his receipt of workers' compensation benefits. Talley requested Appeals Council review, contending that his disability insurance benefits should not be reduced because of his worker's compensation benefits. The Appeals Council found the argument meritless.

Talley then sought judicial review of the Secretary's decision contending that his prior application should have

been reopened and that his benefits should not be subject to any offset. Upon de novo review of a magistrate judge's report, the district court dismissed the complaint as meritless.

In his brief, Talley appears to raise the same arguments that he presented to the district court. In addition, he contends that the district court erred by not permitted him to engage in discovery.

Upon review, we conclude that the Secretary committed no error of law. The Secretary properly barred consideration of Talley's prior application for benefits under the doctrine of res judicata. *Wyatt v. Secretary of Health and Human servs.*, 974 F.2d 680, 687 (6th Cir. 1992). Furthermore, Talley's social security disability benefits are subject to the offset provisions of 42 U.S.C. §424a(a) because he receives workers' compensation benefits. See *Merz v. Secretary of Health and Human Serv.*, 969 F2d 201, 204-07 (6th Cir. 1992). Finally the district court properly denied Talley's request for discovery.

Accordingly, we deny the request for oral argument and affirm the district court's judgment. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

Lenard Green

Clerk

No. 93-3643

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHN T.E. TALLEY,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	ORDER
	)	
SECRETARY OF HEALTH AND HUMAN SERVICES,	)	Filed
	)	January 14, 1994
Defendant-Appellee	)	
	)	

BEFORE: KENNEDY, MARTIN, and NELSON, Circuit Judges.

John T.E. Talley seeks a rehearing and a writ of certiorari from this court's November 18, 1993, order affirming the district court's judgment denying his request for social security disability benefits.

After careful consideration, the panel concludes that it acted under no misapprehension of law or fact in issuing its order. Fed. R. App. P. 40(a).

Accordingly, it is ORDERED that the petition for rehearing and for a writ of certiorari be, and it hereby is, denied.

ENTERED BY ORDER OF THE COURT

Lenard Green
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No: 93-3643

Filed: January 24, 1994

JOHN T.E. TALLEY
Plaintiff - Appellant

v

SECRETARY OF HEALTH AND HUMAN SERVICES
Defendant - Appellee

MANDATE ISSUED

Pursuant to the court's disposition that was filed 11/18/93 the mandate for this case hereby issues today.

A True Copy

Attest:

Valerie Fields
Deputy Clerk

No Costs Taxed
Filing Fee . . . . $
Printing . . . . . $
. . . . . .
Total . . . $

cc: John T. E. Talley
Mr. Kent W. Penhallurick

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN T.E. TALLEY,	)	CASE NO. 1:92CV2273
	)	
Plaintiff,	)	JUDGE PAUL R. MATIA
	)	
v.	)	MAGISTRATE JUDGE
LOUIS W. SULLIVAN	)	J.W. BARTUNEK
SECRETARY OF	)	
HEALTH AND	)	ORDER
HUMAN SERVICES,	)	
	)	File January 24, 1994
Defendant	)	
	)	

This action is before the court seeking judicial review of the final decision of the Secretary of Health and Human Services denying plaintiff's claim for disability benefits. The matter has been referred to the magistrate judge for a report and recommendation.

Pursuant to 42 U.S.C. §405(g), this court's scope of review consists of entering upon the pleadings and transcript of the record a judgment affirming, modifying or reversing the decision of the Secretary. The court's

standard of review is limited to determining whether or not substantial evidence supports the Secretary's decision. To this end, motions for summary judgment shall not be permitted, since the standard for ruling on summary judgment is qualitatively different than the standard of review here. See Kenny v. Heckler, 577 F.Supp. 214 (N.D. Ohio, 1983).

Therefore, parties shall submit briefs in support of their respective positions. Any motion for summary judgment filed will be considered as a brief in support of the party's position.

IT IS ORDERED that, in the interest of the orderly and efficient disposition of this action and to afford the parties to affirmatively present their factual and legal arguments, the following schedule shall prevail:

1. The Secretary's answer and the transcript of the entire record of proceedings shall be filed within ninety days of the filing of the complaint, which date of filing was October 28, 1992.

2. The parties shall file their briefs within thirty days after the answer and record have been filed.

3. If either party chooses to respond to the opponent's brief, that party shall file a reply brief within fifteen days from the filing of the opponent's brief.

Briefs shall state the facts upon which the party relies and shall cite, by transcript page number, the pages relating these facts. Briefs shall also cite the relevant statutory and case law supportive of the party's position.

Pursuant to Local Rule 8:2.1, this case is on an expedited track and must be considered within six months. Therefore, motions for continuance will not be readily granted.

IT IS SO ORDERED.

JOSEPH W. BARTUNEK
United States Magistrate Judge

DATED: November 13, 1992

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN T.E. TALLEY,	)	CASE NO. 1:92CV2273
	)	
Plaintiff,	)	JUDGE PAUL R. MATIA
	)	
v.	)	MAGISTRATE JUDGE
	)	J.W. BARTUNEK
DONNA SHALALA,	)	
M.D.[1], SECRETARY	)	REPORT AND
OF HEALTH AND	)	RECOMMENDATION
HUMAN SERVICES,	)	
	)	Filed May 17, 1992
Defendant	)	
	)	

This action is before the court, pursuant to 42 U.S.C. §405(g), seeking judicial review of the Secretary's final decision regarding Talley's application for disability insurance benefits.

The matter comes before the magistrate judge for a report and recommendation.

---

[1]Donna Shalala, M.D., succeeded Louis D. Sullivan, M.D., as Secretary of Health and Human Services on January, 1993. Therefore, Donna Shalala, M. D., is the proper defendant in this action. Fed.R.Civ.P. 25(d)(1). See also 42 U.S.C. §405(g).

I.

Talley filed an application for disability insurance benefits on September 8, 1987, alleging disability since November 23, 1984, due to a back injury. His application was denied initially and upon reconsideration. Talley did not seek further review of this denial.

On December 15, 1989, Talley filed a second application for disability benefits, alleging disability since October 26, 1984, due to the same back injury. This application was also denied initially and upon reconsideration and Talley requested an administrative hearing.

After a de novo hearing, on June 19, 1991 an administrative law judge (ALJ) issued a decision denying Talley's second application for disability insurance benefits. The Appeals Council remanded the case to the ALJ to obtain the testimony of a medical expert sand to re-evaluate Talley's residual functional capacity. The ALJ conducted a second hearing at which a medical expert testified that Talley's condition equalled 20 C.F.R. Part 404, Subpart P, Appendix 1, Section 1.05C (the Listing).

On April 10, 1992, the ALJ issued a new decision finding Talley disabled since January 20, 1988, since his condition equalled in severity the Listing at Section 1.05C. Talley's request for disability benefits prior to January 20, 1988 was denied by the ALJ based upon res judicata. The ALJ further noted that Talley's benefits were subject to worker's compensation offset.

Talley sought review of this decision by the Appeals Council contending that his disability insurance benefits should not be reduced due top his receipt of worker's compensation benefits. The Appeals Council adopted the decision of the ALJ as the final decision of the Secretary.

Talley then instituted this action for judicial review of the Secretary's final decision.

II.

Judicial review of the Secretary's decision is limited to determining whether the findings of fact made by the Secretary are supported by substantial evidence. The court may not try on the case de novo, nor resolve conflicts in evidence, nor decide questions of credibility. The findings of the Secretary as to any fact, if supported by substantial

evidence, shall be conclusive. Garner v. Heckler, 745 F.2d 383, 387 (6th Cir. 1984). See also 42 U.S.C. §405(g).

Substantial evidence has been defined by the Supreme Court as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Richardson v. Perales, 402 U.S. 389, 401. The substantiality of the evidence must be based upon the record taken as a whole. It is not simply some evidence or even a great deal of evidence, but rather, it must take into account whatever in the record fairly detracts from its weight. Furthermore, the court may not focus and base a decision on a single piece of evidence while disregarding other pertinent evidence. Garner 745 F.2d at 388. (citations omitted).

III.

Talley argues that he should be entitled to a period of disability benefits beginning on October 24, 1984. The Secretary states that disability benefits prior to January 20, 1988, are barred by the doctrine of res judicata.

Talley's initial application for disability insurance

benefits was denied on January 19, 1988, and Talley declined to seek further review. Although Talley was successful on his second application for disability benefits, that decision only relates to his condition post January 19, 1988. The issue of Talley's disability between October 24, 1984 and January 19, 1988 had been previously denied by the ALJ and Talley declined to seek further review within sixty days, as required by 20 C.F.R. §§404.950 and 404.909.

42 U.S.C. §405(g) provides, in pertinent part, as follows:

> Any individual, after any final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such a decision by a civil action commenced within sixty days..."(Emphasis added.)

Talley is seeking to reopen his initial application for disability benefits. The Secretary has refused. A refusal to reopen a prior application is not a final decision and may not be reviewed by the courts unless constitutional claims are raised. Harper v. Secretary of Health and Human Services, 978 F.2d 260, 262 (6th Cir. 1992), citing

Califano v. Sanders, 430 U.S. 99, 107-09, 97 S.Ct. 980, 51 L.Ed.2d 192 (1977); Blacha v. Secretary of Health and Human Services, 927 F.2d 228 (6th Cir. 1990). Here, Talley has raised no constitutional claims. Thus, the court has no jurisdiction to review the ALJ's decision refusing to reopen plaintiff's earlier application in which he sought disability benefits from October 24, 1984 through January 19, 1988.

Accordingly, it is the finding of the magistrate judge that the Secretary's decision denying Talley's request for disability benefits prior to January 20, 1988, based upon res judicata, should be AFFIRMED.

IV.

Talley also alleges that his disability benefits should not be offset by his worker's compensation benefits.

42 U.S.C. §424a provides that an individual entitled to both workers' compensation benefits and Social Security disability benefits cannot receive more than eighty percent of his pre-disability earnings. This section manages that federal benefits shall be reduced to not less than zero, when necessary to ensure that the sum of the individual's

state and federal benefits does not exceed the eighty percent ceiling. See also 20 C.F.R. §404.408(c).

Congress' intent to limit state and federal benefits to eighty percent of pre-disability earnings was explained in Swain v. Schweiker, 676 F.2d 543, 546-47 (11th Cir.), cert. denied, 459 U.S. 991, 103 S.Ct. 349, 74 L.Ed.2d 288 (1982), as follows:

> [I]t was clear from the legislative history that the purpose of [section 424a] is to prevent the payment of excessive combined benefits. Such payment was thought to cause two evils: first, it reduced a worker's incentive to return to the workplace and hence impeded rehabilitative efforts; and second, it created fears that the duplication of benefits would lead to an erosion of state workers' compensation programs.

See also Merz v. Secretary of Health and Human Services, 969 F.2d 201, 205 (6th Cir. 1992).

Thus, the Secretary's was correct in reducing Talley's social security disability benefits pursuant to Section 424a to the extent that his combined federal and state benefits exceeded eighty percent of his pre-disability earnings.

Accordingly, it is the recommendation of the

magistrate judge that the Secretary's decision to offset Talley's benefits by his workers' compensation benefits should be AFFIRMED.

Respectfully submitted,

JOSEPH W. BARTUNEK
United States Magistrate Judge

DATED: May 17, 1992

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within ten (10) days of receipt of this notice. Failure to file objections waives a party's right to further appellate review in regard to the matters addressed in the Report and Recommendation. See Thomas v. Arn, 474 U.S. 140, 106 S.Ct. 471 (1985); United States v. Walters, 638 F.2d 947 (6th Cir. 1981).

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

JOHN T.E. TALLEY,	)	JUDGE PAUL R. MATIA
	)	
Plaintiff,	)	CASE NO. 1:92CV2273
	)	
-vs-	)	MEMORANDUM OF
	)	OPINION AND ORDER
DONNA SHALALA,	)	RE: AFFIRMING
SECRETARY	)	SECRETARY'S
OF HEALTH AND	)	DECISION
HUMAN SERVICES,	)	
	)	Filed June 1, 1993
Defendant	)	
	)	

The Secretary of Health and Human Services denied claimant disability insurance benefits for disability since October 26, 1984 and November 23, 1984 respectively. After plaintiff's request for an administrative hearing concerning the former decision, the Administrative Law Judge issued a new decision finding claimant disabled as of January 20, 1988. Plaintiff did not seek further review of the former denial. The ALJ also noted that Talley's benefits were subject to worker's compensation offset.

The Appeals Council adopted the decision of the ALJ as the final decision of the Secretary.

Plaintiff sought benefits from October 26, 1984, and requested judicial review of the Secretary's decision. The case was referred to Magistrate Judge Joseph W. Bartunek for preparation of a report and recommendation pursuant to Local R. 5:1.2(d). The Magistrate Judge submitted his reports and recommendations on May 17, 1993. Plaintiff filed timely objections.

The Magistrate Judge recommended that the Secretary's decision be affirmed, finding that the decision was supported by substantial evidence and based upon the res judicata effect of the earlier decisions. The Magistrate Judge also recommended that plaintiff's Motion for Discovery, which requests a copy of a Second Circuit Court of Appeals case, be denied as moot.

The Court has reviewed the Magistrate Judge's reports and recommendations and plaintiff's "objections", de novo. The Court agrees with the Magistrate Judge's reports and recommendations in their entirety and adopts them as its own.

Therefore, the report and recommendation of the Magistrate Judge is hereby adopted. The Secretary's decision is affirmed and judgment will be entered in favor of the Secretary.

IT IS SO ORDERED.

Paul R. Matia
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN T.E. TALLEY,	)	JUDGE PAUL R. MATIA
	)	
Plaintiff,	)	CASE NO. 1:92CV2273
	)	
-vs-	)	JUDGMENT ENTRY
	)	
DONNA SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES,	)	Filed June 1, 1993
	)	
Defendant	)	

This Court, having filed its Memorandum of Opinion and Order, hereby enters judgment for the defendant, Donna Shalala, Secretary of Health and Human Services, and against the plaintiff, John T.E. Talley.

IT IS SO ORDERED

Paul Matia
UNITED STATED DISTRICT JUDGE

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

JOHN T.E. TALLEY

-vs-

Docket Number 1:92CV2273

PAUL R. MATIA
(District Court Judge)

DONNA SHALALA,
SEC. OF HEALTH-SERVICES

NOTICE OF APPEAL

Notice is hereby given that JOHN T.E. TALLEY appeals to the United States Court of Appeals for the Sixth Circuit from the (X) Judgment (___) Order (X) Other (specify) **CONSTITUTIONAL ERROR (DISCOVERY) 14th AMEND.** entered in this action on **FILED 93 JUNE 8; P.M. 3:35**
(Date)

"Pro Se" JOHN T.E. TALLEY
(Counsel for Appellant)
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(216) 681-5555

Phone: (216) 681-5555

Date: June 8, 1993

Respectfully submitted

John T.E. Talley pro per

John T.E. Talley, Sr.

Pro Per.